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May 25, 2005

Senator Angela Z. Monson  
2300 North Lincoln Boulevard, Room 428  
Oklahoma City, Oklahoma 73105

Commissioner Bruce Johnson  
Utah Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

RE: Arkansas's Petition for Membership in the Streamlined Sales and Use Tax Agreement

Dear Senator Monson and Commissioner Johnson,

The State of Arkansas has petitioned for membership in the Streamlined Sales and Use Tax Agreement, and accordingly has submitted to you, as Co-Chairs of the Streamlined Sales Tax Implementing States, the following:

1. Petition for Membership;
2. Compliance Checklist,
3. Certificate of Mailing, and;
4. Taxability Matrix.

The Petitioning States are responsible to determine whether Arkansas is in compliance with the Agreement sufficient to meet the requirement of § 805. The Draft Rules and Procedures for the Governing Board provide the opportunity for public comment related to a state's petition for membership and certificate of compliance. *See* Draft Rule 702(E). That draft rule states that public comment as to Arkansas's petition for membership and certificate of compliance shall be filed with the Co-Chairs of the Streamlined Sales Tax Implementing States and with Arkansas's authorized representative. The Arkansas Department of Revenue has designated Richard A. Weiss as its "authorized representative" for receiving written notices on matters governed by the Agreement. *See* Draft Rule 806.2(D).

Upon review of the documents submitted by Arkansas and as a result of its analysis of these documents, the group of business that have organized as the informal Business Advisory Council have reached several conclusions concerning Arkansas's compliance as detailed below.

## **General Concerns**

The BAC expressed a general concern regarding the effort of many of the states to promulgate regulations where the state intends to achieve compliance with the Agreement through regulatory authority. In numerous states, many regulations have not yet been promulgated and preexisting regulations have not been repealed. In addition, a concern exists that states may promulgate regulations without having the proper underlying statutory authority to do so. Each state should ensure that its regulations are properly legislatively authorized.

Pursuant to §§ 303 and 401, each state is required to participate in the Agreement's registration system. This system must be operational by October 1, 2005 for the states to be in compliance with the Agreement.

Arkansas is among the states that have not yet developed their taxability matrix, required by § 328 of the Agreement. For states that have developed these matrixes there is a lack of consistency in the approach to completing the matrixes when they are compared state-to-state. Sales price, delivery charge, direct mail, medical definitions, and installation charges are areas where the lack of consistency is most noticeable. Does "NA" mean that an item is exempt or that the defined term is not necessary because the state taxes everything?

## **Specific Concerns**

Although we recognize that Arkansas has pending legislation that would resolve some of the state's compliance problems, the following questions were raised regarding the State's compliance checklist questions:

1. SSTP requires, "No member state shall have multiple state sales and use tax rates on items of personal property or services after December 31, 2005, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the Agreement." Changes are needed in Arkansas Code (§ 26-52-605 through 26-52-607) to change the authority for the additional state tax rate in Texarkana to a local tax to be given to the state in lieu of an income tax. If our laws are effective prior to January 1, 2006 this tax will need to be capped (see #2 below). Additional "special" state sales taxes (tourism, rental tax, rental vehicle taxes, residential moving) should also be re-codified to remove them from the general sales and use tax code provisions so they are not viewed as multiple state tax rates.
2. SSTP requires "A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction." The city of Texarkana has two local taxes—a special 1% model cities that is not capped by a single transaction definition and a half percent tax that is capped. The special 1% "Model Cities" local tax collected will require amendment to provide for the tax cap until all local caps are removed January 1, 2006. By capping all three taxes (state 1% & 2 city taxes), we can combine all three into one local tax.

3. SSTP does not require sellers to give the names and addresses of all agents operating in Arkansas, the location of any and all distribution or sales houses or offices of other places of business in this state, and such other information as the director may require as referenced in current Arkansas code. Ark. Code Ann. §26-53-121 will need to be amended to comply with the Agreement. End the sentence after “register with the director”.
4. SSTP requires Arkansas to participate with other member states in development of an address-based local rate and boundary change system. Arkansas code needs revision to include this authority and requirement (compliance checklist requirement).
5. SSTP requires states to relieve sellers and Certified Service Providers (CSPs) from liability for collecting incorrect amounts of tax by relying on data provided by the State on rates, boundaries, and jurisdiction assignments. Arkansas code needs revision to include the authority to provide relief to sellers and CSPs caused by incorrect information provided by the State (compliance checklist requirement).
6. SSTP only allows exemptions based on entity, use, or nature of product. The exemption for construction contracts under Ark. Code. Ann §26-52-427 that provides for reduced rates for certain construction contracts requires amendment or repealed to be in compliance with the Agreement.
7. SSTP will require Ark. Code Ann. 26-52-507 regarding sourcing of florist sales to be changed to destination based effective January 1, 2006 (compliance checklist requirement). Currently, florists are taxed based on where the transmittal takes place.
8. SSTP will require Ark. Code Ann. § 26-74-608 (b) deleted so purchases made by Direct Pay permit holders are sourced in accordance with the new destination based sourcing rules in Ark. Code. Ann § 26-52-521.
9. SSTP requires each member state to relieve the seller of any tax if the seller followed Section 317 (Administration of Exemptions) of the Agreement. This eliminates Arkansas’ “Good Faith” requirement. Ark. Code Ann. § 26-52-517 and 26-52-519 require amendment for compliance. Also, we may need to change law to allow assessment against purchaser who gave false exemption to seller.
10. Ark. Code Ann. § 26-52-501 requires amendment to allow reporting of “Tax Due” instead of combined gross receipts and taxable sales. Ark. Code Ann. § 26-52-501 (b) (1) requires amendment to remove “under oath”. The SSTP electronic return filed will only report tax due.
11. SSTP requires the State to provide an alternative method for “same day” payment if electronic fund transfer fails other than ACH Debit or ACH Credit. Ark. Code Ann. § 26-19-107 (3) (A) requires amendment to allow alternative methods without statutory penalties.

12. SSTP requires amendment to Ark. Code Ann. § 26-52-309 regarding bad debt deduction. Addition to the code to include (1) When amount of bad debt exceeds taxable sales for period when written off, refund claim may be filed within statute of limitations (measured from due date of return on which bad debt could first be claimed) and (2) for purposes of reporting payment on previously claimed bad debt, any payments made are applied first proportionately to taxable price of property or service and sales tax thereon, and secondly to interest, service charges, and any other charges and (3) If the books and records of the party support allocation among states, then permit allocation. The Agreement requires for compliance.
13. SSTP Agreement requires in connection with a purchaser's request for a refund from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: (i) uses either a provider or a system, including a proprietary system, that is certified by the state; and (ii) has remitted to the state all taxes collected less any deductions, credits, or collection allowance. The Agreement requires for compliance.
14. SSTP agreement requires customer refund procedures to provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Arkansas code requires amendment to include this provision. The Agreement requires for compliance.
15. SSTP provides definitions for (1) Computer software (2) Delivered electronically (3) Electronic (4) Load and leave and (5) Prewritten computer software as defined in the Agreement. Code will need to exempt "delivered electronically" and by "load and leave". Code revision are needed for these definitions and revision of Ark. Code Ann. § 26-52-304 and 26-53-109. Currently, the above definitions are not in the code.
16. SSTP provides definitions for (1) Purchase price (2) Food and food ingredients (3) Model 1 seller (4) Model 2 seller and (5) Model 3 seller. Code will need to adopt these definitions. Currently, these definitions are not in the code.
17. SSTP provides definitions for (1) Purchaser (2) Sales price and (3) Certified service provider. The current definitions in the code do not match the Agreement definitions verbatim.
18. SSTP provides for the adoption of uniform medical definitions. The Ark. Code. Ann. will need to be amended to remove its examples and adopt the proper definitions.
19. SSTP provides a specific definition for "delivery charges". Arkansas code requires amendment to include this definition. Currently, the code does not have a definition for delivery charges.

20. SSTP agreement and Ark. Code. Ann. § 26-53-102 define “Tangible Personal Property” (TPP) as “personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software. Arkansas code requires amendment to match definition of TPP in sales tax code to the SSTP definition. Currently, our sales tax law does not define TPP.
21. SSTP agreement provides definitions for Drug and Prescription. Arkansas code requires amendment to include definitions for compliance with the Agreement. Currently, the code does not define drug and prescription.
22. Ark. Code Ann. § 26-52-103 amended by Act 1273 of 2003 was not codified correctly. Requires code revision to correct errors.
23. SSTP agreement requires member states to relieve sellers and Certified Service Providers (CSPs) from liability to state and its local jurisdictions for having charged and collected the incorrect tax resulting from erroneous data in the State provided taxability matrix. Arkansas code requires amendment to include this provision for compliance with the Agreement.
24. SSTP requires that the effective date of rate changes for services covering a period starting before or ending after statutory effective date of a rate change shall be as follows: (1) For rate increases, the new rate shall apply to first billing period starting on or after the effective date (2) For rate decreases, the new effective date shall apply to bills rendered on or after the effective date. Arkansas code requires amendment to include this provision for compliance with the Agreement.
25. The SSTP Agreement requires member states to provide amnesty to sellers who register to pay or collect and remit applicable sales tax in accordance with the voluntary agreement. Arkansas code requires amendment to include these provisions for compliance with the Agreement.
26. Arkansas code requires amendment to authorize DFA to certify service providers and computer systems for use by SSTP participants in accordance with provisions in the agreement. Code revision needed for Arkansas’ certificate of compliance.
27. SSTP requires monetary allowances as determined by the Governing Board to be paid to Certified Service Providers selected by Model 1 sellers for preparation of tax reports and tax remittances; to Model 2 sellers using certified software; to Model 3 sellers and all other eligible sellers who have proprietary computer systems for tax reporting and remittance. Code revision needed for Arkansas’ certificate of compliance.
28. Arkansas code provides for a 2 percent prompt payment discount (of sales tax due) to in-state sellers but does not provide for the same prompt payment discount to out-of-state based vendors that sell in Arkansas (vendor use tax). SSTP does not provide this type of distinction between sellers and anticipates discounts for all sellers if the state grants discounts. Possible code revision to provide equal discount provisions

may be needed for purposes of SSTP compliance and additionally to remove any possible Constitutional challenge.

29. Ark. Code Ann. § 26-75-211, § 26-75-311, and § 26-75-404 require amendment to remove the requirement to submit to DFA maps of local jurisdiction boundaries. The requirement was removed from legislation adopted in 2003 but was later readopted in subsequent legislation during the session. The maps are not needed.
30. Current Arkansas code provisions provide that all revenues derived from the levying of the Gross Receipts Tax and Compensating Use Tax on aircraft and aviation fuel, aviation services, aircraft parts and accessories, and other gross receipts taxes remitted by aircraft dealers, airports, and flying fields are reported to DFA as special revenues for deposit to the credit of the Department of Aeronautics Fund to be used for constructing and improving airports, civil airways, and other air navigation facilities. For purposes of SSTP uniform tax reports, an alternative method for reporting the state sales and use tax due on the aviation related products is not provided. An alternative method of calculating or determining the amount of revenue for deposit into the Aviation Fund is needed.

The above issues only reflect the BAC's primary concerns and cannot be construed to signal a totality of the concerns of the business community or a specific industry.

Should you have questions concerning the BAC's position with respect to Arkansas's compliance with the Agreement or need additional information thereon, please contact me at the number above.

Regards,



Stephen P.B. Kranz  
Tax Counsel

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